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TREASURY FOR OFAC, FINCEN, AND ASST. SECRETARY ZARATE

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SUBJECT: GOT TAKES STEPS TO BOLSTER ITS COUNTER-TERROR FINANCE REGIME

Classified By: Robert S. Deutsch for Reasons 1.4 (b) and (d).

¶11. (C) Summary. Turkey's current counter-terror finance regime lacks the legal authority to carry out effective action against financiers of terror and it is weak on enforcement and interagency coordination. For example, terrorism finance is not clearly criminalized in Turkish law and Turkey does not fully comply with international standards such as the FATF Special Eight Recommendations to Fight Terrorism Finance. Currently, the GOT is working to improve its legal regime by re-defining terrorism and criminalizing terrorism finance. In addition, it is endeavoring to bolster its enforcement capabilities through a new law which governs the functions of its Financial Intelligence Unit, MASAK. Though these proposed legal reforms seek to address some of the regime's deficiencies, a track record of repeated delays warrants continued engagement and pressure on many fronts from the US, EU, UN, FATF, and the Egmont Group. End Summary.

A Regime with no Legal Teeth

¶12. (C) Acts of terrorism against third parties are not specifically addressed in the GOT's existing law since terrorism is currently defined in the Turkish mindset and law as a crime against the State or against Turkish citizens. Moreover, terrorism finance has yet to be defined as a crime in Turkey's Law Number 3713 on the Fight Against Terrorism (LFAT) which, in addition to the Turkish Penal Code (TPC), serves as one of the GOT's principal mechanisms for fighting terror finance. Though the GOT says it already has provisions in the law that can be activated for preventing and suppressing financing of terrorists acts, there is no strong legal basis for these mechanisms if the acts are not committed against Turkish citizens or the Turkish State. Therefore, the GOT is only legally capable of taking action against those who commit acts of terror against the Turkish State. However, according to Article 90 of the Turkish Constitution, international agreements signed and endorsed by the GOT acquire the force of domestic law. On this basis, the GOT, according to a decree issued in 2001, can administratively freeze assets of UN-designated individuals or entities on the UN 1267 Committee's consolidated list.

¶13. (C) Since September 11, 2001, the GOT has realized that it needs to take a more international perspective in its approach to terrorism. The GOT is aware that it must amend the LFAT and redefine terrorism and criminalize terror finance in order for its laws to be in harmony with the International Convention for the Suppression of the Financing of Terrorism to which Turkey is a party. As a member of various UN organizations, the Financial Action Task Force (FATF) and the Egmont Group, Turkey's traditional definition of terrorism does not comply with international standards.

An Ineffective FIU and Lack of Interagency Coordination

¶14. (C) In addition to legal deficiencies, the GOT's regime is handicapped by a weak Financial Intelligence Unit (FIU) --the Financial Crimes Investigation Board, or MASAK--and lack of interagency coordination. MASAK serves as the GOT's primary investigator of financial crimes. However, a July 2004 visit by a joint Department of Treasury FinCEN and Italian Ufficio dei Cambi (UIC) delegation found MASAK to be a relatively weak-functioning FIU whose analysts perform only the most basic of analytical work when looking at suspicious transaction reports (STRs). MASAK may task one of six Turkish regulatory and supervision authorities such as the Bank Sworn Auditors Department of the Bank Regulatory and Supervisory Agency (BRSA) to conduct investigations on STRs, however, MASAK has not yet developed a set of uniform guidelines for these agencies to follow when conducting their investigations. Furthermore, despite the potential complexity of financial crimes networks, nowhere in the investigative process does MASAK interact with law enforcement authorities. In short, the delegation concluded that if MASAK were to apply for Egmont Group membership today, it would not meet the criteria for membership and would be rejected.

15. (C) MASAK's would-be allies--prosecutors and law enforcement officials--also play a key role in the fight against financial crimes. However, MASAK and law enforcement agencies admit that interagency coordination is a problem. In December 2004, the USG sponsored two separate training programs on anti-money laundering and terrorism finance. Representatives from the Turkish National Police (TNP), MASAK, the Jandarma, and the BRSA participated in the first program on the investigation of money laundering and terrorism finance led by experts from the US Federal Bureau of Investigation (FBI). The second program focused on the prosecution of financial crimes and was led by a US District Court Judge, US prosecutors, and an expert from the US Department of Justice. Turkish judges, including from the Supreme Court, as well as prosecutors and officials from the Ministry of Justice and MASAK participated and made presentations.

16. (C) In both of these courses, one of the most common concerns voiced by members of all the relevant agencies was the lack of coordination among the various agencies who deal with money laundering and terrorism finance. The President of MASAK, Genc Osman Yarasli, told econoffs that although MASAK has a good relationship with the Ministry of Justice (MOJ), very rarely do members of MASAK interact with judges and prosecutors from various provinces. Law enforcement agencies, in turn, commented that lack of coordination between MASAK and their agencies serves as a huge disadvantage in the fight against financial crime. All the agencies said they benefited positively from the training and would seek to implement some of the techniques they learned in their efforts to fight terrorism finance and money laundering.

Weak Compliance with FATF

17. (C) A weak FIU and lack of interagency coordination on combating financial crimes impedes compliance with international standards. Turkey has been a member of FATF since 1991 and has committed to multilateral surveillance and peer review. It is up for FATF review in 2006. If the review were held today, FATF would find that Turkey is not compliant with all eight of FATF's special recommendations on terrorism finance.

18. (C) Turkey's compliance with the FATF terror finance recommendations is reviewed below:

--Special Recommendation 1: Ratification and Implementation of UN Instruments.

Though Turkey is a party to all relevant UN instruments, including the United Nations International Convention for the Suppression of the Financing of Terrorism, implementation of these instruments is weak.

--Special Recommendation 2: Criminalizing the Financing of Terrorism and Associated Money Laundering.

The 1996 anti-money laundering law lists terrorism as a predicate offense for money laundering. However, due to the above-mentioned definition of terrorism in the current law, the law does not necessarily apply to terrorist acts or terrorist financing committed against parties other than the Turkish State or against non-Turkish people.

--Special Recommendation 3: Freezing and Confiscating Terrorist Assets.

The GOT only has the legal authority to identify and freeze the assets of terrorist individuals and groups designated by the UN 1267 Sanctions Committee. Even this authority could be vulnerable to court challenge under Turkey's constitution, since the authority to freeze derives from the Council of Ministers Decree rather than law.

--Special Recommendation 4: Reporting Suspicious Transactions Related to Terrorism.

MASAK's suspicious transaction form specifically lists terrorism finance as one of the indicators for filing an STR. However, the lack of safe harbor for filers can be a limiting factor in their willingness to file.

--Special Recommendation 5: International Cooperation.

There is no mechanism for timely information sharing with other countries' law enforcement and anti-terrorist financing agencies.

--Special Recommendation 6: Alternative Remittance.

The GOT has taken no steps to regulate or register

alternative remittance networks.

--Special Recommendation 7: Wire Transfers.

A Cabinet decree based on law number 32 (the law to protect the Turkish currency) requires monthly official reporting to the Turkish Central Bank for all types of wire transactions equal to or above USD 50,000. These reports are then sent to MASAK. STR,s are required and, according to BRSAs and bank officials, if a cross-border transfer which appears to be a suspicious transaction transpires, the transaction is immediately reported to a MASAK liaison officer. Under the current law, if MASAK decides the transaction requires further investigation, then it appeals to the prosecutor's office for an investigation. Nevertheless, there are still some deficiencies in this system. MASAK currently has a very small FIU database, there are unclear guidelines for regulatory agencies, investigations, and financial transaction evidence from September 11 shows that terrorist funded transactions have been made in amounts well under USD 50,000.

--Special Recommendation 8: Non-profit Organizations

The GOT has a General Director of Foundations which licenses and oversees charitable organizations. Applicants are required to verify and prove their funding sources. Charities must have bylaws and are audited by the Directorate and are subject to being shut down if they act outside the bylaws. All NGOs are required to hold an annual general assembly meeting to publish their financial reports. MASAK, in turn, investigates any denunciations. However, there is no central registry for these financial reports to provide ease of access to appropriate law enforcement and regulatory agencies. The EU accession twinning project is providing MASAK with a sound structural database system and could serve as a registry for information for law enforcement and other regulatory agencies.

Legal Reforms in Progress

¶9. (C) In order to address the weaknesses in its counter-terror finance regime, the GOT must pursue a dual approach whereby it broadens the legal definition of terrorism to comply with international standards and criminalizes the financing of terrorism. Former MFA Director General for Intelligence and Research, Hakan Okcal, told us he believed legal changes were necessary for Turkey to be able to take appropriate action against individuals and entities involved in the financing of terrorist groups outside of Turkey and apart from UN designees. The MFA believes it must be able to act immediately once they receive corroborating evidence of terrorism finance, however, the current extent of their authority and jurisdiction over freezing and confiscating assets of terrorist financiers is limited. The GOT has looked to the EU framework decision on terrorism, and existing US, UK, and French laws on terrorism as references in amending their own laws.

¶10. (SBU) At the behest of the UN Counter-Terrorism Committee (UNCTC), the GOT established the Working Group on Terrorist Financing (WGOTF) in April 2004 to make the necessary legal reforms to criminalize terrorism finance in accordance with international conventions and taking into account UNSCR 1373.

The Prime Ministry authorized the creation of the group whose members include representatives from the Ministries of Finance, Foreign Affairs, Justice, Interior, and the Undersecretariat for Treasury. MASAK (the anti-financial crimes agency which is also Turkey's Financial Intelligence Unit (FIU)) was assigned as the coordinating agency for the group.

¶11. (SBU) The WGOTF recently submitted their initial proposals*specifically adding provisions for criminalizing terrorist financing in the LFAT and amending the definition of terrorism so that the LFAT is more in line with the International Convention for the Suppression of the Financing of Terrorism*to all relevant agencies for review. The final proposals will be submitted to the Prime Minister,s Office by MASAK, and subsequently to the Turkish Parliament for final approval.

¶12. (SBU) All changes in the LFAT will be referenced in the new Turkish Penal Code passed in 2004 where amendments have also been prepared with regards to terrorism finance and money laundering. Terrorism finance would become a predicate offense for money laundering in the new Turkish Penal Code Article 282 where money laundering predicate offenses were broadened to include all predicate offenses punishable by one year imprisonment. Terror finance*as defined in the new proposed LFAT provisions*can be punishable by one year imprisonment. The amendments to the LFAT are expected to be sent to the Council of Ministers soon. The above-mentioned Turkish Penal Code will enter into force on April 1, 2005.

Streamlining its FIU

¶13. (C) The GOT is also taking measures to streamline its FIU, MASAK. MASAK claims that a new draft law focusing on structural and procedural changes for the agency will ameliorate some of the inherent weaknesses of the organization. MASAK has been working on this draft law since October 2003 and embassy contacts indicate that the draft was finally sent to the Minister of Finance in mid-February 2005.

According to MASAK Vice President Ender Tosun, if this law is passed, Turkey will be in full compliance with all international standards, including the FATF Special Eight Recommendations to Fight Terrorism Finance. Based on the poor track record for interagency coordination on this draft law, it is difficult to predict whether or not the draft will actually be approved and enacted in the near future.

Comment

¶14. (C) Comment. The GOT's plans to criminalize terror finance, define terrorism in accordance with international standards, and streamline its FIU are important steps towards strengthening its counter-terror finance regime. However, it is still unclear how quickly these new laws will be enacted and whether relevant agencies will use the strengthened legal regime to effectively toughen enforcement. Given the GOT's track record, the road to reform will not be easy or speedy. The USG, along with the FATF, Egmont, OFAC, the UN, and the EU, should continue to look for ways to keep the pressure on the GOT to follow through with its proposed reforms. Furthermore, the USG should continue its long-standing engagement with the GOT not only with training in counter-terror finance, but also on policy. End Comment.

EDELMAN